IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 145 of 2005 (S/S)

Harish Chandra Pathak
and others …….. Petitioners

Versus

State of Uttaranchal
Through Secretary
Rural and Urban Development,
Uttaranchal and others
……. Respondents

Mr. B.S. Adhikari and Mr. Mahesh Sah, learned counsel for the petitioners
Mr. Sudhir Singh, learned counsel for respondent No. 2.
Mr. D.S. Patni, learned counsel for respondent Nos. 3 to 6.
Learned Standing Counsel for respondent No. 1.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the petitioners, learned Standing Counsel for the State and Mr. D.S. Patni, Advocate, who has accepted notices on behalf of respondent Nos. 3 to 6.

2) This writ petition has been filed by the three petitioners who are working as Junior Engineers with Uttaranchal Pey Jal Sansadhan Vikas Evam Nirman Nigam in the District of Champawat. The relief of mandamus is sought in the writ petition directing the respondents to treat the petitioners in the Hill Sub Cadre and to consider their promotions as per their seniority.

3) Brief facts of the case as narrated in the writ petition, are that the petitioners were initially appointed as Junior Engineers in the U.P. Jal Nigam in the year 1979 (Petitioner Nos. 1 and 3) and 1983 (petitioner No. 2). Under the Hill Sub Cadre Rules, 1972, options were invited for Hill Sub Cadre in various

departments, and U.P. Jal Nigam also invited options accordingly. However, the process appears to have been dropped after sometime. Thereafter, under the U.P. Jal Nigam, Hill Sub Cadre Regulations, 1998 again options were invited in the year 1999. Petitioners' case is that they opted for Hill Sub Cadre not only in pursuance of Regulations of 1992 but also under Regulations of 1998. However, it appears that a writ petition filed before the Lucknow Bench of Allahabad High Court, circular issued in this regard under Regulations of 1998 was stayed. In 2002, Uttaranchal Pey Jal Vikas Evam Nirman Nigam was created and employees of U.P. Jal Nigam who were in Hill Cadre at that stage were taken with the new Corporation created after the division of State of Uttar Pradesh. Petitioners have submitted that they opted for the Hill Cadre but wrongly been denied of the same.

4) Learned counsel for the petitioners drew my attention to the judgment and order dated 05.10.2001 passed by Division Bench of this Court in writ petition No. 860 (S/B) of 2001 in which on the petition of similarly situated Assistant Engineer, the Court disposed of said writ petition with the observation *"As we have seen from facts narrated above the petitioner had exercised his option prior to the enforcement of Hill Sub Cadre regulation 1998 and his option could have been proceeded with as it was not exercised in pursuance of the circular issued on 21.01.1999 which was said to have been stayed by the High Court. Thus, the Jal Nigam is directed to consider the case of the petitioner as absorbed in Jal Nigam and to accord him Hill cadre giving him all the consequential benefits thereof."*

5) Again in writ petition No. 113 (S/S) of 2005, another Bench of this Court, in case of one Vinay Kumar Saxena, a

Junior Engineer, similarly situated to the present petitioners, passed the following order on 11.02.2005:

> *"Heard Sri Vinay Kumar, learned counsel for the petitioner, Sri D.S. Panti, Advocate, who has accepted notices on behalf of the respondents No. 1 and 2 and Sri Sudhir Singh Advocate, who has accepted notice on behalf of respondent No. 3.*
>
> *The petitioners who are Junior Engineers with the respondents have moved this writ petition under Hill Sub Cadre of Uttaranchal Pey Jal Nigam in pursuance of the option exercised by them under Hill Sub Cadre Rules 1992.*
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> *Learned Counsel for the parties have submitted that the facts of the case are similar to the case of Yashpal Singh Vs. Uttaranchal Pey Jal and others in which this Hon'ble Court has passed an order on 12.01.2005 in writ petition No. 4 (S/S) 20005 and, as such the present writ petition be disposed of in terms of the aforesaid judgment so far it relates to accord Hill Sub Cadre of Pey Jal Nigam to the petitioners.*
>
> *Accordingly, the writ petition is decided in terms of the judgment cited above so far it relates to accord Hill Sub Cadre to the petitioner."*

6) Mr. B.S. Adhikari, learned counsel for the petitioners as well as Mr. D.S. Patni, learned counsel for Uttaranchal Pey Jal Sansadhan Vikas Evam Nirman Nigam agree and submitted that this writ petition may also be disposed of in terms of the aforesaid judgment of this Court as the present petitioners are similarly situated to the one who filed the writ petition No. 113 (S/S) of 2005, so far as the question to accord Hill Sub Cadre is concerned.

7) Accordingly, this writ petition is disposed of summarily with the direction that the petitioners' case for absorption on the Hill Cadre shall be considered in terms of the judgments mentioned above provided their options were found to be genuine.

(Prafulla C. Pant, J.)

Dt. 17.02.2005
H. Negi